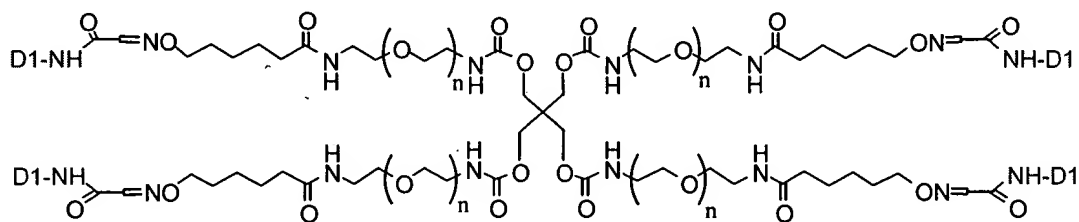


REMARKS

The Examiner has required restriction to a specific compound, including all elements therein (i.e. a specific PEO-polyamino acid conjugate or molecule thereof), to which the elected invention will be examined on the merits. Applicant respectfully traverses the supplemental restriction requirement.

Applicant respectfully requests reconsideration and withdrawal of the supplemental restriction requirement. Applicant submits that the supplemental restriction requirement does not properly consider the claimed invention, thus making a response to the current supplemental restriction requirement difficult. The instant invention is not a polyamino acid compound, necessitating a search for every polyamino acid sequence claimed. Rather, the currently claimed invention is to chemically defined valency platform molecules comprising high molecular weight polyethylene oxide, which may be conjugated to bioactive molecules such as, for example, polyamino acids (i.e., polypeptides), and is not limited to a particular polyamino acid. Applicant submits that the claimed subject matter as a whole must be considered when evaluating the merits of a restriction requirement. The current supplemental restriction requirement not only improperly focuses on a particular limitation of the claimed conjugates, but also further focuses on the preferred moieties of that limitation.

In order to comply with the restriction requirement, Applicant hereby elects the conjugate:



wherein the molecular weight of the first, second, third, and fourth polyethylene oxide groups in combination is 26,400-44,000 Da. However, Applicant believes the restriction requirement improperly narrows the scope of the claimed invention.

The supplemental restriction requirement further states that Applicant's previous response (Paper No. 17) was unresponsive. Applicant submits that they responded to the Office Action as requested, and thus was not non-responsive. The original restriction requirement (Paper No. 11) divided the claims into the following groups:

- Group I: Claims 1-16, drawn to a chemically defined valency platform molecule.
- Group II: Claims 1, 17-19, and 24, drawn to a conjugate of a valency platform and a biologically active compound, wherein the biologically active compound is a polysaccharide.
- Group III: Claims 1, 17-19 and 21-34, drawn to a conjugate of a valency platform and a biologically active compound, wherein the biologically active compound is a poly(amino acid).
- Group IV: Claims 1, 17-20 and 24, drawn to a conjugate of a valency platform and a biologically active compound, wherein the biologically active compound is a nucleic acid.
- Group V: Claims 1, 17-19 and 24, drawn to a conjugate of a valency platform and a biologically active compound, wherein the biologically active compound is a lipid.

Applicant elected Group III (Claims 1, 17-19 and 21-34), without traverse. The subsequent Office Action (Paper No. 14), mailed February 25, 2003, indicated that claims 2-16 and 20 were withdrawn from consideration as being drawn to non-elected inventions, and that claims 1, 17-19 and 21-34 were pending in the present application and were being examined on the merits. In the response to Office Action (Paper No. 17), Applicant responded to each objection and rejection raised by the Office for claims 1, 17-19 and 21-34, and thus submits that the response to Office Action was fully responsive.

Further, Applicant has sought to diligently resolve issues related to the supplemental restriction requirement in a timely manner. Applicant's representative phoned Examiner Maury Audet on December 8 and 10, 2003 to arrange an informal telephone interview. On December 22, 2003, Applicant's representative discussed the supplemental restriction response with Examiner Audet, who suggested that Applicant's representative discuss transferring the application to another art unit with Supervisory Patent Examiner Brenda Brumbeck. Examiner Audet said that Examiner Brumbeck was out of the office until January 2 or 5, 2004. Applicant's representative left a telephone message with Examiner Brumbeck on January 8, 2004 with a request for an interview. Examiner Brumbeck replied with a phone message that she would take a look at the supplemental restriction

requirement, and would phone again at that time. In a follow-up phone message on January 16, 2004, she indicated that she had taken a look at the supplemental restriction requirement and discussed it with Examiner Audet, and agreed that the application might be better examined by another art unit. She stated that the Patent Office was in the middle of a major move from Crystal City to Alexandria, and that once she was relocated, she would talk with a chemistry Supervisory Patent Examiner about transferring the application, and would get back to Applicant's representative at that time.

Applicant's representative left a telephone message with Examiner Brumbeck on January 29, 2004, inquiring as to the status of the application. Examiner Brumbeck left a phone message with Applicant's representative on February 2, 2004, indicating that she had discussed with Examiner Audet that the currently claimed invention was to valency platform molecules rather than to polypeptides. She stated that she would contact a Supervisory Patent Examiner regarding transferring the application to another art unit. She left a follow-up phone message with Applicant's representative on February 2, 2004, stating that Examiner Richard Raymond had agreed to take the application and would take another look at the restriction requirement, but that he was in the process of moving from Crystal City to Alexandria. Applicant's representative spoke with Examiner Raymond on February 2, 2004 regarding the upcoming deadline for response. Examiner Raymond indicated that he was in the process of moving, and suggested that Applicant's representative respond to the supplemental restriction requirement, and that Applicant's representative could discuss the supplemental restriction requirement further with the Examiner once the move was completed. Applicant's representative left a telephone message with Examiner Raymond later on February 2, 2004, requesting that the Examiner withdraw the supplemental restriction requirement.

Applicant appreciates the discussion with Examiner Audet, and the efforts of Examiners Brumbeck and Raymond to transfer the application to a more appropriate art unit. Applicant further appreciates Examiner Raymond taking the application.

Applicant expressly reserves the right under 35 U.S.C. § 121 to file a divisional application directed to the nonelected subject matter during the pendency of this application, or an application claiming priority from this application.

Applicant requests examination of the elected subject matter on the merits.

CONCLUSION

In the unlikely event that the transmittal form is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing Docket No. 252312007500. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: February 6, 2004

Respectfully submitted,

By 

Rebecca Shortle

Registration No.: 47,083

MORRISON & FOERSTER LLP

755 Page Mill Road

Palo Alto, California 94304

(650) 813-5654